

Eric A. LaGuardia (SBN 272791)
LAGUARDIA LAW
3245 University Ave, #1
San Diego, CA 92104
Tel. (619) 655-4322
Fax. (619) 655-4344
eal@laguardialaw.com

Attorneys for Plaintiff,
KAREN FRIERY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KAREN FRIERY, an individual,

Plaintiff,

VS.

WILLIAMS & FUDGE, INC., and DOES
1-10,

Defendants.

Case No.: '14CV2769 MMAKSC

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

INTRODUCTION

2 1. This is an action for damages brought by an individual consumer against
3 Defendant for violations of the Fair Debt Collection Practices Act, 15 U.S.C. §
4 1692, *et seq.* (“FDCPA”); the California Rosenthal Act, Civil Code § 1788 *et seq.*
5 (“Rosenthal Act”), both of which prohibit debt collectors from engaging in
6 abusive, deceptive, and unfair practices; among others.

JURISDICTION AND VENUE

8 2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §
9 1337. Supplemental jurisdiction exists for the state law claims pursuant to 28
10 U.S.C. § 1337.

11 3. Because Defendant does business within the State of California, personal
12 jurisdiction is established.

13 || 4. Venue is proper pursuant to 28 U.S.C. 1391.

PARTIES

15 5. Plaintiff, KAREN FRIERY, ("Plaintiff"), is a natural person residing in the
16 County of San Diego, and State of California.

17 6. Defendant WILLIAMS & FUDGE, INC., (“Defendant”), is a company
18 doing business collecting debts in California operating from an address at 300
19 Chatham Ave, Rock Hill, SC 29730.

20 7. Plaintiff is a consumer as defined by both the Federal Fair Debt Collection
21 Practices Act and the California Rosenthal Act.

22 8. Plaintiff is obligated or allegedly obligated to pay a debt, and is a
23 “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

24 9. Defendant is a person who uses an instrumentality of interstate commerce or
25 the mails in a business the principal purpose of which is the collection of debts, or
26 who regularly collects or attempts to collect, directly or indirectly, debts owed or
27 due or asserted to be owed or due another and is therefore a debt collector as that
28 phrase is defined by 15 U.S.C. § 1692a(6).

10. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).

11. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

12. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

13. Sometime before June 1, 2014, Plaintiff is alleged to have incurred certain financial obligations. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

14. Sometime thereafter, but before June 1, 2014, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt.

15. Subsequently, but before June 1, 2014, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

16. On or about June 4, 2014, Defendant mailed a dunning letter to Plaintiff. A few days later, Plaintiff received that letter.

17. The letter received by Plaintiff, and sent from Defendant, demanded that Plaintiff pay \$1,944.44.

18. Defendant attempted to collect this amount without a contract or law authorizing Defendant to do so.

||||

1 19. This communication to Plaintiff was a “communication” as that term is
2 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent with
3 15 U.S.C. § 1692g(a).

4 20. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
5 defines that phrase, and an “initial communication” consistent with Cal. Civ. Code
6 § 1812.700(b).

7 21. Through this conduct, Defendant used a false, deceptive, or misleading
8 representation or means in connection with the collection of a debt. Consequently,
9 Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

10 22. Through this conduct, Defendant made a false representation concerning the
11 character, amount, or legal status of a debt. Consequently, Defendant violated 15
12 U.S.C. § 1692e(2)(A).

13 23. Through this conduct, Defendant was collecting an amount (including any
14 interest, fee, charge, or expense incidental to the principal obligation) when such
15 amount was not expressly authorized by the agreement creating the debt or
16 permitted by law. Consequently, Defendant violated 15 U.S.C. § 1692f(1).

17 24. Because this violated certain portions of the federal Fair Debt Collection
18 Practices Act as these portions are incorporated by reference in the Rosenthal Fair
19 Debt Collection Practices Act, through California Civil Code § 1788.17, this
20 conduct or omission violated Cal. Civ. Code § 1788.17.

21 25. On or about October 17, 2014, Defendant mailed a dunning letter to
22 Plaintiff. A few days later, Plaintiff received that letter.

23 26. The letter received by Plaintiff, and sent from Defendant, demanded that
24 Plaintiff pay \$1,944.44.

25 27. Defendant attempted to collect this amount without a contract or law
26 authorizing Defendant to do so.

27 28. This communication to Plaintiff was a “communication” as that term is
28 defined by 15 U.S.C. § 1692a(2).

1 29. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
2 defines that phrase.

3 30. Through this conduct, Defendant used a false, deceptive, or misleading
4 representation or means in connection with the collection of a debt. Consequently,
5 Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

6 31. Through this conduct, Defendant made a false representation concerning the
7 character, amount, or legal status of a debt. Consequently, Defendant violated 15
8 U.S.C. § 1692e(2)(A).

9 32. Through this conduct, Defendant was collecting an amount (including any
10 interest, fee, charge, or expense incidental to the principal obligation) when such
11 amount was not expressly authorized by the agreement creating the debt or
12 permitted by law. Consequently, Defendant violated 15 U.S.C. § 1692f(1).

13 33. Because this violated certain portions of the federal Fair Debt Collection
14 Practices Act as these portions are incorporated by reference in the Rosenthal Fair
15 Debt Collection Practices Act, through California Civil Code § 1788.17, this
16 conduct or omission violated Cal. Civ. Code § 1788.17.

17 34. The October 17, 2014 letter received by Plaintiff, and sent from Defendant,
18 also states, “[a]s you recall, extra consideration was granted with an arrangement
19 to repay the above-referenced debt(s). You have broken your promise to pay \$0.00.
20 Unless this payment is received within five (5) days, we reserve the right to refuse
21 future partial payments and to demand payment in full.” Plaintiff never made, let
22 alone broke, any such promise to Defendant.

23 35. Through this conduct, Defendant used a false, deceptive, or misleading
24 representation or means in connection with the collection of a debt. Consequently,
25 Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

26 36. Through this conduct, Defendant engaged in conduct the natural
27 consequence of which was to harass, oppress, or abuse a person in connection with
28 the collection of a debt. Consequently, Defendant violated 15 U.S.C. § 1692d.

1 37. Because this violated certain portions of the federal Fair Debt Collection
2 Practices Act as these portions are incorporated by reference in the Rosenthal Fair
3 Debt Collection Practices Act, through California Civil Code § 1788.17, this
4 conduct or omission violated Cal. Civ. Code § 1788.17.

5 38. On or about September 12, 2014, Defendant sent an e-mail to Plaintiff which
6 Plaintiff received.

7 39. The September 12, 2014 e-mail from Defendant stated that attached to its
8 email is Plaintiff's "original promissory note" proving that Plaintiff owed the debt
9 to Defendant. Defendant attached nothing more than text pasted into a word
10 processing document that Defendant itself purports within said document to be
11 merely "similar" to information Plaintiff would have received from the original
12 creditor in an e-mail at the time she allegedly incurred the subject debt. This
13 attachment was not a copy of Plaintiff's original promissory note as Defendant's
14 email claimed.

15 40. This communication to Plaintiff was a "communication" as that term is
16 defined by 15 U.S.C. § 1692a(2).

17 41. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b)
18 defines that phrase.

19 42. Through this conduct, Defendant used a false, deceptive, or misleading
20 representation or means in connection with the collection of a debt. Consequently,
21 Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

22 43. Because this violated certain portions of the federal Fair Debt Collection
23 Practices Act as these portions are incorporated by reference in the Rosenthal Fair
24 Debt Collection Practices Act, through California Civil Code § 1788.17, this
25 conduct or omission violated Cal. Civ. Code § 1788.17.

26 ///

27 ///

28 ///

CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

44. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

45. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

46. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II

ROSENTHAL FAIR DEBT COLLECTIONS PRACTICES ACT

(ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

47. Plaintiff repeats, re-alleges, and incorporates by reference, all other Paragraphs.

48. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32.

49. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

111

PRAYER FOR RELIEF

50. WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).
- Any other relief that the court deems proper.

Dated: November 14, 2014

____/s Eric A. LaGuardia

Eric A. LaGuardia
Attorney for Plaintiff
KAREN FRIERY

DEMAND FOR JURY TRIAL

Plaintiff, KAREN FRIERY, by and through her attorney, Eric LaGuardia, hereby demands a trial by jury in the above-captioned matter.

Dated: November 14, 2014

/s Eric A. LaGuardia

Eric A. LaGuardia
Attorney for Plaintiff
KAREN FRIERY

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Karen Friery

(b) County of Residence of First Listed Plaintiff San Diego County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Eric LaGuardia, 3245 University Ave, #1
San Diego, CA 92104
Tel: 619-655-4322

DEFENDANTS

Williams & Fudge, Inc.

County of Residence of First Listed Defendant York County, SC
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'14CV2769 MMAKSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION	FEDERAL TAX SUITS
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
---	---	--	---	--	---

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 1681 et seq.

VI. CAUSE OF ACTION

Brief description of cause:
Debt Collecting in violation of federal and state statutes

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/20/2014

s/Eric LaGuardia

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE